

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: December 15, 2005

Resolution No. L-324

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION CONSUMER PROTECTION AND SAFETY DIVISION (UTILITY SAFETY AND RELIABILITY BRANCH) INVESTIGATION RECORDS PURSUANT TO PUBLIC RECORDS ACT REQUEST BY THOMAS J. BRANDI SEEKING DISCLOSURE OF COMMISSION STAFF INVESTIGATION RECORDS RELATING TO AN ACCIDENT INVOLVING MARCHETTA WILSON ON DECEMBER 22, 2003 IN NEWPORT BEACH, CALIFORNIA. (INCIDENT NO. E20031222-04).

BACKGROUND

A letter dated January 2, from Linnes Finney, Jr. asked the California Public Utilities Commission (Commission) to provide records concerning the Commission's investigation of a December 22, 2003 electric incident which injured Marchetta Wilson when an underground electric vault exploded in Newport Beach. Commission staff provided the requester with a copy of the initial incident report filed by the utility regarding this incident, in accord with Commission Resolution L-272, but informed the requester that the Commission's investigation records could not be made public without the formal approval of the Commission. On April 1, 2004, Ms. Wilson's new lawyer, Thomas J. Brandi, reiterated the early records request. Commission staff responded that the accident investigation was not yet complete, and that a Commission order authorizing disclosure would be required. Between early 2004, and the present, Mr. Brandi reiterated his request on a number of occasions, and received the same reply. On August 5, 2005, Mr. Brandi informed Commission staff that litigation regarding Ms. Wilson's accident had been concluded, and provided certain information he felt might be of interest to the Commission during its own still ongoing investigation. He asked that this information be kept confidential. Mr. Brandi repeated his requests for information on several subsequent occasions. Staff has now completed its investigation of the December 22, 2003 accident involving Ms. Wilson.

DISCUSSION

The requested records are “public records” as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The California Constitution, PRA, and discovery law, favor disclosure of public records. The public has a constitutional right to access government information. (California Constitution, Article 1, § 3 (a).) Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people’s right of access, and narrowly construed if they limit the right of access. (California Constitution, Article 1, § 3 (b)(2).) New statutes, court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest. (Id.)

The PRA provides that a an agency must base a decision to withhold a public record in response to a PRA request upon the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.¹

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government Code § 6253.4 (a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 precludes staff’s disclosure of “[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” Section 2.2(a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

Because General Order 66-C § 2.2(a) limits staff’s ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, staff denies most initial requests for investigation records. Staff usually informs requesters of the option under General Order 66-C § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, staff prepares a draft resolution for the Commission’s consideration.

¹ The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, PRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. See Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

There is no statute forbidding disclosure of the Commission's safety investigation records. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.² Disclosure does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.³ Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident/incident.

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act (IPA) (Civil Code § 1798 et seq.). However, the IPA authorizes disclosure of personal information "Pursuant to the California Public Records Act." (Civil Code § 1798.24 (g).)

The only personal information in the records requested here consists of references to the Commission staff and other government employees investigating the incident, the identity of utility employees, employees of G&W Electric, past and present lawyers for Marchetta Wilson, Marchetta Wilson's expert witnesses, and Marchetta Wilson. While the PRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy (Government Code § 6254 (c)), no personal information in the current incident investigation file requires redaction.

The only information in the current incident investigation file which should not be disclosed to the public is the information submitted by Mr. Brandi on August 5, 2005. This information was received in confidence by Commission employees during the normal course of their duties, and has apparently not been open or formally disclosed to the public before it was submitted to the Commission. This information is official information, as defined by Evidence Code § 1040 (a). The need to maintain the confidentiality of this information outweighs the necessity for disclosure in the interest of justice, since disclosure of safety information voluntarily disclosed by individuals not employed by regulated entities during the course of an accident investigation, but subject to a request that such information be treated as confidential, could reduce the quantity of such information the Commission receives in the future. Therefore the official information submitted by Mr. Brandi is subject to the conditional official information

² Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

³ See, e.g. Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-309 *Re Corona* (December 18, 2003); and L-320 *Re Knutson* (August 25, 2005).

privilege in Evidence Code § 1040 (b)(2), and should not be disclosed. Information subject to an Evidence Code privilege against disclosure is exempt from disclosure in response to Public Records Act requests, pursuant to Government Code § 6254 (k).

The Commission has on numerous occasions found that Public Utilities Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

COMMENTS ON DRAFT RESOLUTION:

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on November 9, 2005, in accordance with Public Utilities Code § 311(g) (1) and Rule 77.7 of the Rules of Practice and Procedure. No Comments were filed.

FINDINGS OF FACT

1. The Commission received a letter dated February 2, 2004, seeking disclosure of Commission staff investigation records concerning an electric incident that resulted in injuries to Marchetta Wilson on December 22, 2003 in Newport Beach, California. An initial Incident Report submitted by the utility was provided, but access to the remaining records in the Commission’s investigation file was denied in the absence of a Commission order authorizing disclosure. On numerous occasions, Thomas J. Brandi, the lawyer replacing the initial requester, reiterated the request for investigation records but was informed that the investigation was not yet complete and that the records could not be released in the absence of a Commission order.
2. The Commission’s investigation of the December 22, 2003 accident is now closed; therefore, the disclosure of the investigation records compiled by the Commission would not compromise the investigation.
3. The public interest favors disclosure of the requested investigation records, with the exception of certain information provided in confidence by Thomas J. Brandi.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Government Code § 6250 et seq.

2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. California Constitution, Article 1, § 3 (b) (1) and (2).
3. The general policy of the Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. (General Order 66-C § 2.2 (a).)
6. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

ORDER

1. The request for disclosure of the Commission's records concerning the investigation of a December 22, 2003 underground electric vault explosion in Newport Beach, California, which injured Marchetta Wilson, is granted; the requested records will be disclosed, with the exception of certain information provided in confidence by Thomas J. Brandi.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of December 15, 2005 and that the following Commissioners approved it:

STEPHEN LARSON
Executive Director